Conducting Government: Governmentality, Monitoring and EU Counter-Terrorism

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This article draws on Foucault’s concept of governmentality in order to challenge the view of EU counter-terrorism as simply a response to terrorism. Rather than focusing on the policies directly targeting terrorism, it is concerned with technologies designed to improve the governance process. The article examines three technologies designed for shaping the conduct of government. These technologies are not value-free but underpinned by specific assumptions of what governing can achieve and, as such, they are implicated in the (re)production of insecurity rather than, as institutionalist accounts do, locating the source of insecurity as external to these institutions. In other words, insecurity is in part brought about by the governance process. The article looks at three technologies targeting the gap—this latter term referring to the difference between a current state of affairs diagnosed as undesirable and the ideal situation (lagging policy implementation for instance). The technologies— the action plan, the timetable and the Counter-Terrorist Coordinator—are premised on the understanding of bridging the gap as instrumental to the provision of security. This mode of governing fuels a circular logic whereby the need to perform better leads to calls for improved monitoring and vice versa.

Introduction

After the attacks on the satirical magazine Charlie Hebdo in January 2015, the European Council vowed to “further reinforce action against terrorist threats, in full compliance with human rights and the rule of law”; one recommendation was to “implement and further develop the tools we have”.1 The European Union’s (EU) responses to terrorism have been characterised by an emphasis on creating and implementing policies that seek to encapsulate the myriad ways in which

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terrorism has manifested as a threat. Particularly in response to attacks in the United States in September 2001, Madrid in March 2004 and London in July 2005, the EU has built up a wide-ranging set of policies to deal with terrorism. In addition to traditional themes such as stimulating police and judicial cooperation between the member states, attention has been devoted to radicalisation, terrorist financing, transport security, critical infrastructure protection, counter-terrorism assistance to third states, terrorist travel and the stimulation of private industry involvement in tackling terrorism. After the November 2015 attacks in Paris, the Council of the EU recalled the European Council’s statement after the first Paris attack in 2015, which “underlines the importance of accelerating the implementation” of policies.2 The present article seeks to show that insecurity is not only the product of the threat—namely, terrorism—but is intimately connected to processes of governance.

This claim is substantiated by drawing on Foucault’s concept of governmentality, which is basically about how forms of conduct are made possible. Conduct is not self-evident, but is called into being through a complex arrangement of “institutions, procedures, analyses and reflections, calculations, and tactics”.3 In particular, governmentality is concerned with the “how” of governance,4 which involves the practices and devices—technologies—that translate political reasoning into programmes of government.5 Therefore, these technologies are not value-free instruments that make actionable something as an object of governance, but are instead implicated in the ordering of conduct in specific ways. This entails a revisiting of certain familiar themes addressed by the literature on EU counter-terrorism, such as the performance of institutions and implementation. Some scholars have noted the disjuncture between stated objectives of EU policies and goals reached,6 which includes a concern with the slow or non-implementation of policies,7 while others have drawn on institutionalist accounts to explain the formation of counter-terrorism as an EU policy space.8 The publications in the latter category explain the development of institutions as reacting to external stimuli such as terrorist attacks, and they situate the source of insecurity outside these institutions, the institutions being merely reactive to their environment. As mentioned above, this inside/outside logic is challenged here by showing how the form and function of these technologies of governance are ensnared in the (re)production of insecurity.

To this extent, the article takes inspiration from securitisation theory, which understands (in)security not as a brute fact but as a socially produced phenomenon that enables a response. Instead of focusing on speech acts for the constitution of (in)security, here the concern is with what Balzacq calls the “policy tools of securitization”. With regard to EU counter-terrorism, Jackson and Baker-Beall problematised the given nature of both terrorism as a threat and counter-terrorism as a natural reaction. Hassan pointed out how the vast output of policies addressing terrorism in the quest for security also contributes to creating greater insecurity. De Goede challenged the perception that the EU is less belligerent than the US in terms of tackling terrorism by pointing to the adoption of precautionary security practices that undercut accountability and legitimacy. Likewise, Guittet argued that the formation of EU counter-terrorism policies has contributed to the (re)shaping of European political identity, particularly with regard to the meaning of democracy. While the present article shares the ethos of these contributions, it does not focus on the “govern[ing] [of] conduct”; that is, policies that target terrorism as an undesirable form of conduct. Instead, the article is concerned with the “conduct[ing] [of] government”; that is, technologies directed at improving governance. In other words, the object of inquiry is the technologies that are seeking to improve the governing process, rather than the policies that directly engage terrorism as an undesirable form of conduct.

More specifically, the article focuses on multiple technologies for monitoring and policing various manifestations of the gap, which is interpreted here as the distance between the current state of affairs and how it should be; Dean refers to this as the “Utopian element” of governing. In this context, Rose and Miller referred to governance as “a congenitally failing operation: the sublime image of a perfect regulatory machine is internal to the mind of the programmers”. In other words, governing conduct always falls short of its stated goals, thereby making possible technologies to improve the governing process. To this extent, the remainder of this article is structured as follows. The first section introduces governmentality. The second section provides an overview of terrorism as a topic of European Community (EC) and EU politics to familiarise the reader with broader rationalities of...
governing terrorism. The third section deals with the action plan as a technology to maintain overview and track the progress in realising counter-terrorism as a policy space. Although the empirics mainly relate to the period following the 11 September 2001 attacks, the action plan has a much longer history as an EC/EU technology for improving government and suggests the achievement of security by realising the correct policies. The fourth section deals with the timetable as a technology for disciplining the member states to implement policies on time. Implementation is considered to level the playing field among member states, thereby closing loopholes and improving security, but it also ignores other fundamental concerns that can be a source of insecurity (weakened legal standards). The fifth section examines the role of the EU Counter-Terrorist Coordinator (CTC) as tasked with monitoring the correspondence between EU policies and the terrorist threat, since a mismatch was considered to trigger insecurity. The conclusion revisits the relation between the production of insecurity, governance, and the limits of the latter.

**Governmentality**

With governmentality, Foucault wanted to arrive at a more complex analysis of the state and therefore rejected an “institution-centric” approach that had characterised his earlier work on the prison and the clinic. For Foucault, government was a form of rule that extended beyond its close association with the state. For instance, the father of a family, the superior in a convent, the teacher, and the master of a child/disciple all govern in one way or another. Instead of studying the micro-practices that governed the prison and the clinic, Foucault adopted a broader gaze and sought to position the “institution [the state] (...) in a general economy of power”. As such, his analysis revolved around the manifold ways—the devices, strategies and tactics (technologies)—through which rule is made possible and the conduct of subjects is shaped and intervened upon. The aim of governmentality, when it comes to forms of rule in general and the state in particular, is “a refusal to give oneself a ready-made object”.

Following Walters and Haahr, governmentality is appropriated here as a tool of analysis, in contrast to two other ways in which Foucault defined the concept. Thus, governmentality refers to an “ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of (...) [a] very specific, albeit very complex, power”. Governmentality has been brought to bear on topics ranging from crime and unemployment to insurance and risk, among others, and has entered both International Relations (IR) and EU studies. The critical purchase of governmentality is, first, that it makes it possible

22. This refers to governmentality as a form of power and a historical process; see Foucault, *Security, Territory, Population*, op. cit., p. 108. For governmentality as a tool of analysis, see William Walters and Jens Henrik Haahr, *Governing Europe: Discourse, Governmentality and European Integration* (London/New York: Routledge, 2005), p. 5.
to problematise governance and the state as timeless and self-evident. Instead, governmentality traces how and with what effects subjects have been governed and how the state continually emerges as an assembly of different practices whose operations are rendered internally consistent. Second, governmentality focuses on the implication of seemingly innocuous, neutral and even banal practices of governing in demarcating and making knowable particular events as objects of policy making. Thus, governmentality looks beyond and simultaneously connects political grand narratives with the small and technical aspects of translating these narratives into practice, thereby highlighting governing as a contingent process. Third, and of particular interest to IR/EU scholars, governmentality understands the international/global without premising such analyses on the alleged supremacy of the state. At the same time, this makes it possible to acknowledge that subjects are governed by forms of rule transgressing the territorial borders of the state, thereby questioning the inside/outside divide that is the foundational myth of much IR scholarship.

Several scholars have produced critical appraisals of governmentality in an IR context.

In terms of method, the present article draws on Merlingen’s distinction between rationalities and technologies. Rationalities refers to “relatively autonomous systems of meaning” that seek to rationalise the conduct of actors in confronting issues of government. Rose and Miller write that “[g]overnment is a problematizing activity: it poses the obligations of rulers in terms of the problems they seek to address”. This directs the scholar to the normativity of governing: what goal should the governing achieve? What means are desirable to this end? What types of knowledge inform the diagnosis of the problem? What lexicon is drawn on to make sense of the problem? Political rationalities are examined through discourse analysis. Discourse refers to a complex set of implicit rules regulating


30. This is contra Dean who offers a fourfold breakdown; see Dean, op. cit., pp. 33, 38–48.
32. Rose and Miller, op. cit., p. 181 (emphasis in original).
34. Ibid., p. 153.
meaning making.\textsuperscript{35} Meaning is not pre-given but mediated via intersubjectively established criteria of what counts as true and false, good and bad, and so on. Text selection is predicated on texts that have a programmatic character; that is, the ideals, goals and means of governing. Contra Merlingen, this requires studying grand public statements \textit{and} more technical texts rather than just the latter.\textsuperscript{36} Analysing both types of text understands governance as a contingent process; that is, where translations from ideas/ideals are predicated on a set of choices, thus entailing processes of inclusion, exclusion, marginalisation and silencing.

Technologies have been defined as “the practices and devices through which political rationalities are operationalized and implemented in actual governance programmes and activities”.\textsuperscript{37} More concretely, technologies refer to “inscription devices such as reports, charts, tables and maps”.\textsuperscript{38} The method of analysis for political technologies is a combination of discourse analysis and “narrative process tracing”.\textsuperscript{39} This latter method generates “thick descriptions of how phenomena are linked. It can be used to show the temporal steps involved in the deployment of a political technology and its broader social effects”.\textsuperscript{40} Text selection follows the governing process, from initial statements formulating a particular vision about how to govern a problem to the more detailed and technical manners of formulating a specific programme by rationalising, breaking up and distributing the problem into manageable pieces.

\textbf{Terrorism as a Topic of EC/EU Politics}

The EU’s involvement with terrorism dates back to the time of the EC in the mid-1970s. During the late 1960s and early 1970s, a sharp increase in the number of violent events in several European countries and the US led to the belief of the arrival of a new form of violence: terrorism.\textsuperscript{41} In particular, the hostage-taking of Israeli athletes by Palestinians during the Summer Olympics in Munich in 1972 and the botched rescue attempt by the West German police focused attention on the issue. Terrorism became a topic of discussion at the United Nations (UN). After progress stalled due to political differences, regional initiatives were developed in order to ensure an effective state response.\textsuperscript{42} In December of 1975 EC ministers of the interior/justice met for the first time to discuss “matters (…) with regard to law and order”.\textsuperscript{43} Although the initial remit concerned security in a broad sense, it quickly boiled down to terrorism alone.\textsuperscript{44}

\textsuperscript{35} Michel Foucault, \textit{The Archaeology of Knowledge and the Discourse on Language} (New York: Pantheon Books, 1972), p. 27.

\textsuperscript{36} Merlingen, “From Governance to Governmentality”, \textit{op. cit.}, p. 152.

\textsuperscript{37} Ibid., p. 153.

\textsuperscript{38} Ibid.; Rose and Miller, \textit{op. cit.}; Walters and Haahr, \textit{op. cit.}, p. 7; Dean, \textit{op. cit.}, pp. 37, 42.

\textsuperscript{39} Merlingen, “From Governance to Governmentality”, \textit{op. cit.}, p. 154.

\textsuperscript{40} Ibid.


\textsuperscript{42} Argomaniz, \textit{op. cit.}, p. 5.


\textsuperscript{44} The initial topics were: terrorism, police technology and training, security in civil aviation, nuclear safety, cooperation in the event of catastrophes; see European Parliament, “Written Question No. 1083/78 by Mr Cot to the Council of the European Communities (21 February 1979)” (Luxembourg: Official
EC attempts to govern terrorism occurred along three tracks between the mid-1970s and the late 1980s. The first refers to the ministerial meetings, which also involved lower-level police/intelligence officials in a forum named Trevi. Its purpose was to facilitate the exchange of information between police and intelligence officials as well as exchange best practices regarding how to deal with terrorists on an operational level in and among the member states. Second, in 1979 the member states adopted (but never ratified) the Dublin Agreement, which prevented suspects from claiming that criminal deeds were a political offence and thereby avoiding extradition. Third, member states, particularly in the 1980s, undertook diplomatic efforts in the context of European Political Co-operation (EPC) to pressurise states such as Syria and, in particular, Libya to refrain from sponsoring terrorists. Thus, in the context of the EC, the governing of terrorism constituted three tracks that developed in isolation from each other without any overall strategy. The logic informing these tracks was the same, however. Terrorism was a distinctly international problem that resulted in the conviction that no single state would be able to solve the issue on its own. Cooperation was, and remains, the key term in the EC/EU context for organising a response to unwanted cross-border mobility.

The moves towards the creation of a European Union broadened the understanding of law and order beyond a concern with terrorism during the second half of the 1980s. The completion of the internal market was accompanied by the decision to abolish all border controls between the member states, including those on individual people. Since border controls were regarded as essential in the provision of security, their removal shifted the gaze from a single unwanted form of cross-border mobility—terrorism—towards a much broader spectrum that included “drugs, other prohibited goods and immigration”. The entry into force of the Maastricht Treaty in November 1993 institutionalised the governing of unwanted mobility as a general principle. Title VI of the treaty concerned “cooperation in the fields of justice and home affairs [JHA]” and covered areas such as police

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46. The Dublin Agreement was a way to apply the Council of Europe’s European Convention on the Suppression of Terrorism among the member states. For a detailed analysis, see Bernhard Blumenau, “The European Communities’ Pyrrhic Victory: European Integration, Terrorism, and the Dublin Agreement of 1979”, Studies in Conflict & Terrorism, Vol. 37, No. 5 (2014), pp. 405–421.


cooperation related to “combatting terrorism, unlawful drug trafficking and other serious forms of international crime”.50

Notwithstanding various initiatives to deal with it, terrorism was not the main topic around which strategising concerning JHA took place prior to the 11 September 2001 attacks.51 Instead, the strategising was dominated by signifiers of drugs and organised crime, both of which were made the subject of so-called action plans, while terrorism was not.52 In particular, organised crime functioned as a container term, bringing together multiple subjects. For instance, the action plan on organised crime lists “corruption, counterfeiting, VAT and other fiscal fraud, piracy, fraud against the Community’s financial interests” as well as the “need to launder the profits thereafter”.53 Terrorism was sometimes identified as an expression of organised crime, and at other times seen as distinct from organised crime.54 A lack of urgency or political sensitivity also explains why terrorism was mostly subsumed under the banner of organised crime.55

EU responses to the attacks in the US on 11 September 2001, in Madrid on 11 March 2004 and London on 7 July 2005 established terrorism as a focal point for policy making. The ontological ambiguity with organised crime faded into the background as terrorism was made the subject of action plans, first following the 11 September 2001 attacks and again in a revised format after the 2004 Madrid bombings.56 In the wake of the London bombings, an official strategy — “The European Union Counter-Terrorism Strategy”— was superimposed upon the action plan; this not only signalled the need for a well-thought-out approach, but also


51. The European Council adopted a declaration on terrorism in 1995. A catalogue of counter-terrorism expertise was created in 1996. Europol was allowed to collect information on terrorism in 1998. Two Council working groups deliberated multiple times a year on terrorism and the European Parliament debated terrorism every other year, and adopted two critical reports in 1996 and in July 2001.


56. It remains to be seen how the relation between terrorism and organised crime develops. Recent developments seem to indicate a blurring of the boundaries again. The Commission’s European Agenda on Security from April 2015 identified as priority concerns terrorism, organised crime and cybercrime and described them as “interlinked areas with a strong cross-border dimension”; see European Commission, “The European Agenda on Security” (Strasbourg: European Commission, 2014), p. 2.
established the governing of terrorism as a long-term affair. While there is no room for a comprehensive treatment of all EU counter-terrorism policies, those policies mentioned herein are exemplary of the particular rationale informing them. A steady policy output sought to enable more cooperation among the member states. The common definition of terrorism ensured that terrorism was a punishable offence in all member states. The European Arrest Warrant (EAW) replaced extradition procedures by implementing simplified surrender procedures. Amendments to the money laundering directive made it possible to target finances intended for terrorist offences. Increased information exchange on terrorism was the object of the Prüm Convention. Agreement on the use of Passenger Name Record (PNR) data within the EU for tackling terrorism is expected in 2016. The rationale of these policies closely parallels that of the internal market: creating a level playing field among the member states by removing political, administrative and legal barriers in order to stimulate cooperation as the best gateway to security.

The Action Plan and the Ordering of Terrorism

The instrument that was drawn on in order to create an overview of activities concerning terrorism was the action plan. This section addresses the particular history of this technology in governing EU affairs and how it informs a particular understanding of security. The Council Secretariat drew up an “Anti-Terrorism Roadmap” to list the measures to be taken by the Justice and Home Affairs ministers following the adoption of a plan of action by the European Council that established terrorism as a “priority objective” in September 2001. The roadmap had the format of a table consisting of four columns—Measures, Deadlines, Body Responsible, and Action—with the rows listing the content of the measures, 46 of them in total. By the time the roadmap was updated in October 2001, the European Council Presidency had expanded its scope beyond JHA to “include the work of the Transport, ECOFIN and General Affairs Councils”. After five more updates, the last of which appeared in July 2002, and having grown to a list of 64 measures, the roadmap was discontinued. As Bossong observed, the disappearance of the roadmap was not due to a completed implementation record because substantial delays and deficits in implementation continued to exist, such as in the case of the EAW.

Following the bombings in Madrid in March 2004, the table as a means of creating an overview was revamped, having been rebranded as the “Revised Action Plan on Terrorism”. Its function was described as follows:

[A] number of documents seeking to monitor its implementation [of the declaration adopted after the Madrid bombings] and [to] reflect the state of play have been created. The post-11/09 roadmap have [sic] been accompanied by other documents of similar nature prepared by various

60. Ibid., p. 58.
institutions and units. Merging all them [sic] into one streamlined document would be a useful step towards elimination of duplication of work.

(...) It is envisaged that the Plan of Action/Roadmap would be regularly updated with a view to ensuring that the action which was required at any particular time in relation to individual measures would be clearly identified.61

Thus, the Action Plan became the document for maintaining an overview of the many initiatives undertaken to govern terrorism, the table having grown to 162 measures by the time of the June 2004 Action Plan. As a technology of government, the Action Plan was designed to make the governing process more efficient by combining several documents into one, thereby removing “duplication of work”.62 An additional function of the Action Plan was that of monitoring the state of policy implementation. The June 2004 Action Plan noted that it “will in that sense be a living document providing a snapshot of the progress made towards realisation of the targets established”.63 This view was (re)confirmed in the 2005 Counter-Terrorism Strategy, which was superimposed upon the Action Plan: the latter “will allow for detailed progress to be monitored on a regular basis”.64 In other words, the Action Plan allowed for stocktaking and diagnosis of whether the governing was on track. By providing an overview and state of play, the Action Plan also served to make the government more effective. However, it did not directly govern upon the events defined as terrorism by steering or shaping the conduct of undesirable subjects. Instead, the Action Plan targets the governing process itself. As such, the Action Plan is defined by assumptions about what governance can achieve. In order to understand this, first a contextualisation of the Action Plan as a technology of governing is necessary.

Bossong noted the long historical trajectory of the action plan in administering the Area of Freedom, Security and Justice (AFSJ), JHA and the completion of the single market.65 The action plan and the roadmap are similar to the “scoreboard” developed by the Commission in 2000 on behalf of the European Council to track the implementation of measures for creating the AFSJ. The scoreboard was a table containing five columns—Objective, Action Needed, Responsibility, Timetable for Adoption, and State of Play—with rows listing the measures.66 The “Action Plan to Combat Organized Crime”, adopted by the Council in 1997, also specified a “Detailed Action Plan”, although not by way of a table but to a similar effect by identifying the responsible body, measures and deadlines.67 When the European Council sought to speed up the realisation of free movement for citizens, it

62. Ibid.
63. Ibid.
tasked a Group of Coordinators with the job in December 1988. The coordinators’ report inventoried what measures were needed, which ones were “essential” or “desirable”, which bodies were competent, and when the measures were due. In justifying the approach of the coordinators, the European Council argued that it was “largely based on the approach and methods employed in the White Paper on the completion of the Internal Market, of proven effectiveness in this context”. The 1985 Commission White Paper had been decisive in terms of breathing new life into the integration process by ordering in a listed manner what had to be done, when, and by whom. In turn, the White Paper borrowed its method from the grandfather of European integration: “The [White] paper adopted the approach advocated by Jean Monnet, defining a programme, a timetable and a method”. In 1951, Monnet had played a major role in launching the European Coal and Steel Community, the predecessor to the EC.

Thus, in the EU context, the action plan as a technology for conducting government travelled across different fields with effectiveness as the argument for its use. This technology is not value-free, but informed by particular assumptions concerning what is possible and how this should be made possible. Action plans suggest what John Law calls “project-ness”: a chronological and teleological ordering of reality to achieve continuity of governing. In other words, governing is not a self-perpetuating and self-evident process, but instead requires continuous attempts to signal problems and devise solutions. Rose and Miller wrote in this regard about government as “a congenitally failing operation” as the governing is never satisfactory, which brings renewed stimuli for forms of governance. To bring this back to terrorism, the listing of measures brought together under the umbrella of the action plan breaks down a complex issue (terrorism) into a catalogue of policy needs. Simultaneously, by prioritising terrorism through the action plan it emerges as a specific subject-position. In other words, the technology of the action plan thus forms terrorism as a distinct and recognisable problem that requires a policy response. The ordering of terrorism through the action plan suggests that security is achievable by putting the right structures in place and adapting them in light of new developments. Norms—the AFSJ’s “high level of safety”—are (re)produced since the key to providing security is posited as the correct and timely implementation of policies.

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70. European Commission, “Completing the Internal Market”, op. cit.
73. Rose and Miller, op. cit., p. 190.
The Timetable as Disciplinary Practice

A key theme in the EU responses to the attacks in September 2001, March 2004, July 2005 and February and November 2015 was the notion of policy implementation. The European Council, in its 2001 plan of action, “instruct[ed] the Justice and Home Affairs Council to implement as quickly as possible the entire package of measures decided on at the (…) meeting in Tampere [in October 1999]”. The Council, following the 2004 bombings in Madrid, explained that “[t]he effective combating of terrorism requires that measures (…) be effectively and comprehensively implemented by Member States”. A Commission paper providing input for these Council discussions noted “not [to] believe that the right answer to these attacks is proposing new legal instruments or new institutions”. The EU CTC stressed the implementation of policies as an important matter during a dialogue on counter-terrorism with the Council, Parliament and the Commission in 2006; the CTC regularly raised the issue in his biannual discussion papers. As mentioned in the introduction to this article, the European Council and the Council also emphasised the need for implementation following the two attacks in Paris in 2015. The concern with implementation is another expression of the gap. It is informed by the erasure of differences between the member states in order to prevent those differences being exploited by undesirable subjects. According to this reasoning, the creation of a level playing field between the member states makes possible the effective administering of security and justice.

The importance attached to policy implementation seems rather mundane. After all, it concerns the translation of political ideas into practice, which is characteristic of all policies. However, this element of translation involves a set of choices. Policy implementation is political, as certain courses of action are opened up while others are forgone. For instance, the decision by the European Council in its 2001 plan of action to prioritise the implementation of the measures agreed upon in the context of the AFSJ (re)confirmed the governing of terrorism as a criminal matter; other contexts to govern terrorism (such as war, aberration, acts of God) were thereby marginalised. The AFSJ was an ambitious programme that, as the name suggests, aimed to strengthen freedom, security and justice across the EU. It contained some politically sensitive measures, such as the EAW. Coupled with the urgency to act, as expressed by politicians following the attacks on 11 September 2001, the EAW was fast-tracked for political approval in a matter of months amidst concerns by several non-governmental organisations (NGOs) and a minority section of the European Parliament about respect for civil liberties and proper democratic scrutiny. By

stressing implementation in the aftermath of a disruptive event such as the 11 September 2001 attacks, the agency of actors involved was circumscribed when it came to contesting the political path taken.

Therefore, implementation suggests a technical move by the member states that consists of transposition into national law in the case of the EAW. This is evident from a 2004 Commission paper that characterised as “often slow, poor and inadequate” the implementation of measures to deal with terrorism.82 The Commission paper continued that “[t]his is unacceptable. Action is needed to turn political agreement into legal reality”.83 Such an interpretation overlooks the fact that more fundamental issues were at stake. For instance, the slowness of implementation is not taken as a signal that the threat of terrorism might not be as grave or urgent as indicated, despite the acknowledgement that not all member states are equally affected by terrorism. Europol’s annual Terrorism Situation and Trend Report (TE-SAT), a publicly available assessment of the terrorist threat in the EU, shows that the category of most concern—“religiously-inspired terrorism”, which involves “al-Qaeda affiliated or inspired terrorism” and more recently “jihadists travelling to and from conflict zones”—sees roughly half of the member states making arrests and attacks occurring only in an incidental manner across the member states.84

Another fundamental issue obscured by the emphasis on implementation is respect for fundamental rights standards. Again, the EAW is a case in point. In 2004, the Italian Justice Minister Roberto Castelli was critical of the EAW for potentially breaching individual rights under Italian law. In the same year, in the Czech Republic, both the Parliament and President Václav Klaus initially withheld consent on the Czech law implementing the EAW, the latter citing constitutional restraints preventing extradition as the motive.85 In 2005, the constitutional courts of Germany, Poland and Cyprus challenged the compatibility of the EAW with their national constitutions, leading to amendments or new national laws to ensure compatibility in all three member states.86 As a consequence, member state agency is transformed. Fichera concluded how differences in transposition in the EAW, due to different national legal cultures, have undercut both the expected harmonisation of the EAW and increased legal uncertainty due to the fact that the reliance on mutual trust between the member states is not being backed up by stronger fundamental rights safeguards.87

83. Ibid.
implementation rests on an elitist understanding of politics confined to EU actors involved in the policy-making process, rendering the subject-position of national legislators closer to that of executors.

The concern with implementation is closely related to the notions of monitoring and disciplining. After all, both concern the translation from political ideas to (legal) reality. Certain technologies have been devised to facilitate the timely implementation of measures by member states, with the intention of disciplining the member states into action. An illustration of this can be seen in the EU response to the 2004 Madrid bombings. One of the proposed responses was that “the right answer to these attacks is [not by] proposing new legal instruments or new institutions. (...) [M]ost of the legislative and institutional framework is proposed or in place and simply needs to be approved and/or implemented on the ground”. 88 However, the CTC, one of whose jobs was to ensure “effective follow-up of Council decisions”, faced a predicament. 89 Under the third pillar, unlike the first pillar, there was no infringement procedure allowing the Commission or a member state to take another member state to the Court of Justice of the EU in case of a failure to transpose policies within a certain period of time. Instead, the Council and the Commission depended on member state reports to determine whether the transposition had been done properly and on time. Another way had to be created and the CTC suggested “regular ‘tour de tables’ on the state of implementation” since this would “put a certain pressure on Member States to speed up implementation”. 90 Indeed, shortly after the CTC’s suggestion, the Action Plan began featuring a table listing the status of implementation for each Framework Decision, as well as for UN Conventions, and later on those of the Council of Europe. 91

But how do these tables work as disciplinary devices? The table has a number of rows listing Framework Decisions or Conventions, and a number of columns representing the member states. Symbols stand for a particular situation: y indicates “implementation completed, legislation has entered into force”, p refers to legislation that has been “implemented in part”, and so forth. 92 From a discursive view, the effect is twofold. First, it enables an EU-wide overview of the state of implementation of the concerned legislative instrument. Second, the table enables a differentiated view per member state. 93 Thus, the overview simultaneously produces a view of the whole and its parts. It makes it possible to see

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92. These are just two of the five symbols used. For a full account, see for instance Council of the European Union, “Report to the European Council”, op. cit., p. 13.
93. A similar table was used to visualise the state of implementation of recommendations following a peer evaluation of member state counter-terrorist policies. See Council of the European Union, “Follow-up Report on the Implementation of Recommendations by the Council of the EU on Counter-Terrorism Measures in the Member States—Executive Summary” (Brussels: Council of the European Union, 2007), p. 10.
whether a piece of legislation is close to being completely enacted and which member states are running behind. Additionally, when the table shows uneven enactment of legislation, which is often the case, it indirectly underscores the need for an EU-administered reporting structure. In other words, the governing of terrorism by the EU is not self-evident, but requires auxiliary means; namely, devices to conduct government in such a way that the conduct of member states aligns with the intentions agreed upon in an EU context. Lacking recourse to the Court as a way to ensure the timely transposition of laws, the CTC mobilised other disciplinary means (the timetable) to create peer pressure—to “put a certain pressure on Member States to speed up implementation”—in order to align the conduct of member states that were lagging behind in implementing legislation so as to remove differences between them as a way to optimise security. This obscures how divergent implementation of a policy (in this case the EAW) hurt fundamental rights standards that are ultimately detrimental to the security of the citizen, while the TE-SAT encourages speculation about terrorism as an EU-wide concern at the expense of the otherwise regional, national or local situat-edness of such concerns.

The CTC and Keeping in Step with an Evolving Threat

The creation of the CTC was another element of the response to the 2004 Madrid bombings. The CTC was tasked with retaining an overall view of policy-making activities. It was the CTC that updated and issued the action plans and timetables for keeping track of policy and legislation. Thus, the CTC was another manifestation of the governing of terrorism by targeting the conduct of government in order to improve it, as this section shows. Besides a concern with efficiency by streamlining the conduct of government and effectiveness via monitoring and disciplining implementation, the CTC also had an anticipatory function—or took the liberty to interpret the job in this way. Gilles de Kerchove, who currently fulfills the role of CTC, wrote in a paper in November 2010: “[m]y role is not simply to co-ordinate the implementation of the EU Counter-Terrorism Strategy, but also to call the Council’s attention to areas where new or reinforced action would be particularly important and timely”. By way of regular “discussion papers” the CTC highlighted pressing matters or challenges. Discussion papers with themes such as information sharing, radicalisation and recruitment, security research, transport security, the external dimension, and increasing internal/external coherence appeared regularly. These papers acted as diagnostic devices similar to the Action Plan: they target the gap between current practice and ideal situation. Unlike the Action Plan, which compared the present state of implementation

94. Walters and Haahr, op. cit., p. 33.
97. Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy—Discussion Paper” (Brussels: Council of the European Union, November 2010), p. 1. De Kerchove has filled the post since September 2007 and is the successor to Gijs de Vries, who was the first to hold the job between March 2004 and March 2007. See Secretary General/High Representative for the Common Foreign and Security Policy, “Javier Solana, EU High Representative for the CFSP, Appoints Mr Gilles de Kerchove as EU Counter-Terrorism Coordinator” (Brussels: Council of the European Union, 2007).
98. See the various discussion papers.
with the desired one, the discussion papers were motivated by forging a correspondence between policies and the threat these policies were designed to tackle.

This policy/threat correspondence is another expression of the gap theme that underlies thinking about implementation in general. What makes an examination of the discussion papers worthwhile in this regard is that they contain frequent and explicit characterisations of the threat facing the EU. As such, these texts permit a reflection on how policy and threat interact. According to convention, counter-terrorist policies are conceived as a response to and independent of the threat they seek to target. A discursive perspective challenges this view by reconsidering how the policy response does not exist outside of any interpretation of the threat. What is this danger and what qualities are ascribed to it? The key quality ascribed to terrorism, manifesting as “Al Qaeda” and associated phenomena, is that it is considered a fluid phenomenon that is expressed through the notion of evolution.99 As the CTC put it in November 2009: “[t]he threat from terrorism thus remains significant, but more importantly it is constantly evolving both in response to our attempts at combating it, and to new opportunities that present themselves”.100 The fluid nature attributed to terrorism means that it can surface in various places and forms. Hence, Al Qaeda is not considered to be just an organisation residing in the borderlands between Afghanistan and Pakistan, but also an ideology, a powerful agential force capable of affecting those living in a permissible environment.

Al Qaeda as an ideology manifests in the discussion papers in two ways. Firstly, as “lone wolves”, “lone actors” or “home grown” terrorism, which refers to persons who have no prior ties to terrorist groups and whose thinking has allegedly been shaped by connecting to the Al Qaeda ideology via the internet.101 The second manifestation is as Al Qaeda “franchises”, which points to groups in Somalia, the Sahel region or Yemen that subscribe to Al Qaeda’s ideology.102 The emergence of these groups results from where “weak States and poor government combine”.103 In turn, this draws on a close association with the notion of the “safe


101. For “lone wolves” and “home grown terrorism”, see Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2009), op. cit., p. 3. For “lone actor”, see Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (May 2012), op. cit., p. 1.

102. Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2010), op. cit., p. 2.

haven” or “sanctuary”, which is said to function as a space for those willing to acquire new skills for wrong-doing: “[w]e must face the fact that a growing number of residents of the EU are seeking or have received training in countries like Yemen, Somalia or in the AF/PAK [Afghanistan/Pakistan] region. The majority of plots detected over the last few years have involved such ‘foreign fighters’”.104 As a result of this fluidity, the mobility of certain individuals is rendered problematic. An EU PNR database—originating as a response to US demands in 2003—was advocated for by the CTC in order to “tackle the increasingly diversified nature of the terrorist threat”.105 According to the CTC, “[p]atterns of travel, for example, which can be derived from visa and PNR information, offer a means of detecting and following people who travel to conflict zones for terrorist training and then return to Europe”.106

The above shows that the governmental response is predicated on a mimicking of the characteristics of the threat. However, mimicking these different features of the threat with a range of policies also establishes the threat as being multiple. For instance, the concern with safe havens was translated into the need for development programmes for the countries affected. As the CTC observed in November 2009: “there is still a reluctance to use aid money to tackle the security challenges facing these countries. We need to work to make sure the causes of insecurity and conflict are taken more into account in developing programmes to support sustainable development”.107 Another example concerns the travel to these sanctuaries by young Europeans to receive training. Travel was problematised by calling for an EU PNR database. The CTC observed that the evolutionary nature of terrorism also mandated a government response that displayed the same features: “our Counter-Terrorism policy also needs to be dynamic and responsive to new conditions”.108 This continuous policy response is not just a response to what allegedly occurs external to it, but is implicated in establishing as real a supposedly ever-evolving threat. Consequently, underlining the threat as evolutionary requires a mode of governance that is attentive in order to identify this process of continuous change. Any mismatch or gap between the threat and the policies designed to deal with the threat becomes a concern that, simultaneously, generates a concern with the conduct of government as policies need to be adopted on time, in a correct manner, and made to fit the notion of threat. The inability to meet these expectations brings renewed attempts at implementation—the introduction of the timetable is an example—resulting in a circular logic of how to improve implementation and

104. For “safe haven” or “sanctuary”, see Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2008), op. cit., p. 10; Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2009), op. cit., p. 3; Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (May 2012), op. cit., pp. 1–2, 15. For these safe havens as training centres, see Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2008), op. cit., p. 10; Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2009), op. cit., p. 3; Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (May 2010), op. cit., p. 5; Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2010), op. cit., p. 3.

105. Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (June 2011), op. cit., p. 4.

106. Ibid.; see also Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (May 2012), op. cit., p. 2.

107. Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (November 2009), op. cit., p. 6; see also Counter-Terrorism Coordinator, “EU Counter-Terrorism Strategy” (May 2012), op. cit., pp. 11–15.

thereby closing off the consideration of the problem as solvable in the first place. Notions of insecurity do not merely reside in the threat existing on the outside of the governing process, but are equally produced intrinsically to governance.

Concluding Remarks

A regular theme in the literature on the EU and counter-terrorism is that of implementation or how rhetoric does not match reality and the performance of EU institutions in responding to terrorism. Rather than attributing the source of insecurity to the terrorist event, it is argued here that mundane technologies of governance are implicated in the (re)production of this insecurity. The action plan, a technology that has traversed in time and space various policy spaces as the European Coal and Steel Community (ECSC), the common market, JHA/AFSJ and counter-terrorism, unites a set of policy proposals with the aim of addressing terrorism. By providing an overview as well as monitoring progress in the formulation of these policies, the action plan signifies the ability to bring about security if those responsible follow the course mapped out by the plan. Thus, the problem of terrorism is suggested as being solvable, which is a high level of ambition. The timetable was designed as a technology for monitoring the state of implementation and shaming faltering member states into action. It shapes implementation as a technical matter to the effect of, when encountering divergence from the set schedule, limiting the political space for concerns about fundamental rights or other assessments of the terrorist threat. In other words, by producing an EU-wide view of the state of implementation, the timetable stimulates the member states to embrace EU ways of governing. After all, the EU is premised on the idea that differences between the member states are not permissible because they are thought to produce insecurity. This view applies to both security and the common market. The current CTC interprets his job as keeping an eye on the evolution of terrorism with a view to raising attention when policies no longer match the threat. Insecurity occurs whenever there is discontinuity in correspondence between threat and policy, which requires constant awareness as well as regular calls for policy improvement. Governmentality makes it possible to problematise governance as self-evident and natural. In terms of a policy response, convention mandates that the occurrence of terrorism be connected with counter-terrorism. However, the broad roll-out and almost incessant adaptation and intensification of EU counter-terrorism policies, of which the above discussed technologies have been part and parcel in the last 15 years, is unlikely to resolve the acts labelled as terrorism. This is testimony to policy responses that continuously fail to match the totality of terrorism as a problem. Because the problem is considered solvable, governance repeatedly fails to match this high level of ambition, thereby fuelling a circular logic of the need to perform better, monitor better and increase awareness, except with the likely effect of falling short again, thus perpetuating a fiction of security that is perhaps better addressed by asking fundamental political questions first.

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